

February 3, 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Reference No.:05-0048

Ms. Sophia Drummond  
Owner  
SK Communications  
5466 Kennesaw Drive  
Baton Rouge, LA 70817

Dear Ms. Drummond:

This is in response to the appeal you filed on behalf of your firm, SK Communications (SK Communications). We have carefully reviewed the material from the Louisiana Department of Transportation and Development (LDOTD) as well as that you submitted, and have concluded that the denial of SK Communications certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Part 26 ("the Regulation") is supported by substantial evidence.

Your appeal is denied based upon our determination that substantial record evidence supports LDOTD's conclusion that the socially and economically disadvantaged owner does not possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

The specific reason for the denial of your appeal is as follows:

**49 CFR Part 26§26.71 (a) states "In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole."**

**(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.**

**(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE**

**firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.**

**(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.**

**(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.**

**(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.**

**(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.**

The record reveals that SK Communications is involved in installing cameras and radios on transit buses, electrical wiring and IVLU. According to the record, you are the sole owner of this firm. You invested \$600 toward the start-up of the business from your personal funds in May, 2004. According to your résumé, you have over 10

years experience in customer service, data entry, multi-phone lines, general filing, office organization, shipping and receiving, problem solving, team work, processing tax returns and driving a school bus. From 2003-2004, you were a County School bus driver for the -----; 2000-2001 you were employed by ----- where you were a Full-Case Facilitator/Warehouse Associate. In 2000, you worked for ----- as a processor, processing tax refunds, office administration and customer care. From 1997-1999, you were employed by ----- as a Manager/Clerk where you managed store operations and inventory. From 1993-1996, you were employed by ----- as a Clerk, managing store operations and inventory. According to the firm's application, you are responsible for financial decisions, negotiating and contract execution, hiring/firing of management personnel, office management, marketing/sales, purchasing of major equipment and authorized to sign company checks. However, you share the following responsibilities with -----, a non-disadvantaged person and non-owner of the firm: Estimating and bidding, Field/Production Operations Supervisor, and authorized to make financial transactions.

According to ----- résumé, from 2001 to present, he is a self-employed Independent Contractor for ----- . ----- installs cameras on transit buses. He is responsible for "laying out the camera system to best suit the customers needs. Camera systems are used in the safety of passengers and drivers. These systems are used in court cases to prove and disprove incidents on public transit.

----- is the person who possesses the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

A review of your qualifications revealed that your experience and qualifications are primarily in the area of office management. According to the Regulations, generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

Your letter of rebuttal stated that, "I feel as though this decision is based upon my past experience, instead of my present knowledge of the systems that my company installs. In the interview, I was never asked if or not I knew what my company did or did I understand and comprehend what needed to be done to install these systems accurately and in a quality manner. I was prepared to show blue prints on what we do and to explain what the different components do and where they are connected and how we do this. I feel if these questions were asked and we would have talked about this part, they would not have felt that this would have been an issue. I am not dependent on ----- employment in this company. I have several contractors that can fill --- ----- position. If needed I can supervise crews on what and where to hook everything up to."

While you argue that ----- is not an integral part of your firm, it is important to note that the firm is home based, located at ----- e,

LA. According to the record, the rental/lease agreement was signed by -----  
 ----- . Moreover, while the bank signature card shows that you are the only  
 authorized signatory on the account, you stated during the on-site review that --- .  
 ----- also has the authority to sign checks. Your rebuttal further confirms  
 LDOTD's findings that "The socially and economically disadvantaged owners must  
 have an overall understanding of, and managerial and technical competence and  
 experience directly related to, the type of business in which the firm is engaged and  
 the firm's operations. The socially and economically disadvantaged owners are not  
 required to have experience or expertise in every critical area of the firm's operations,  
 or to have greater experience or expertise in a given field than managers or key  
 employees. The socially and economically disadvantaged owners must have the  
 ability to intelligently and critically evaluate information presented by other  
 participants in the firm's activities and to use this information to make independent  
 decisions concerning the firm's daily operations, management, and policymaking."  
 LDOTD's conclusion is supported by substantial record evidence that the non-  
 disadvantaged employee has the technical expertise to perform the critical aspects of  
 the firm's operations.

**§26.71(b) "Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms."**

**(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.**

According to the record, ----- obtained his experience by working for his  
 uncle (who has the same type of business) for 3-4 years. ----- furnishes the  
 materials for jobs and subcontracts SK Communications to install the equipment. We  
 agree with LDOTD's conclusion that SK Communications is not an independent  
 business as required by the Department's Regulation.

Your letter of rebuttal states that on the second part, "Furthermore, a disproportionate  
 dependence exists between your firm and ----- who provides the contract  
 and equipment for the jobs performed. This really confused me, as I will explain. I  
 am not dependent on ----- for work. ----- is one of several companies that I  
 will be able to contract work for if my DBE certification is granted. As with all  
 companies doing business with transit facilities, it is typically true that the contracting  
 company provides all the equipment and they hire companies as myself to do the  
 installation component of these components. Companies that I will be able to do  
 work for include some of the following: -----, which install cameras on  
 transit buses. -----, which also does that same, along with ----- .  
 Companies that install the same system as -----, which is an integrated vehicle  
 logistics system, is ----- . There are several other companies that also  
 do these systems." Since SK Communications relies on an independent contractor  
 involved in the same line of work to perform its work, we agree with LDOTD's

determination that the firm is not an independent business as required under the Department's Regulation.

In summary, the information provided cumulatively supports a conclusion that SK Communications does not meet the criteria as required for DBE certification under 49 CFR Part 26. The company is, therefore, ineligible to participate as a DBE on LDOTD's Federal financially assisted projects. This determination is administratively final as of the date of this correspondence.

Sincerely,

Joseph E. Austin, Chief  
External Policy and Program Development Division  
Departmental Office of Civil Rights

cc: LDOTD

bcc: ACR-1, TCR-1, HCR-1, C-12

Austin: S-33:F.SK Communications 02/02/05